

Attorney Docket No. P13319-US2

**REMARKS/ARGUMENTS****1.) Claim Amendments**

Claims 1 through 18 are pending in the application. They have not been amended, but a courtesy copy of the claims is provided above.

**2.) Examiner Objections - Specification**

The Examiner objected to the disclosure because of several informalities. The Applicant thanks the Examiner for his careful review of the specification. In response, the Applicant has modified the specification as suggested by the Examiner. The Examiner's consideration of the amendments to the Specification is respectfully requested.

**3.) Claim Rejections – 35 U.S.C. § 102(b)**

The Examiner rejected claims 1, 9 and 10 under 35 U.S.C. § 102(b) as being anticipated by Comer ("Internetworking with TCP/IP Volume 1 Principals, Protocols, and Architecture"). The Applicant respectfully traverses this rejection.

Claim 1 states:

1. A method of synchronizing encrypted data in an Internet Protocol based network, comprising the steps of:  
encrypting a data packet to be transmitted;  
generating a sequence number associated with said encrypted data packet; and  
transmitting said encrypted data packet together with said sequence number via an Internet Protocol based link.

In contrast, Comer does not discuss nor imply "encrypting a data packet to be transmitted." Comer discusses privacy mechanisms in the context of complete messages, such as email messages (Comer, page 475, fifth paragraph). However, Comer does not discuss the concept of encrypting small units such as data packets. The Applicant realizes that the Examiner must broadly interpret the claim language, but the term "data packet" is a well known, industry specific term. It certainly does not mean an entire message, such as email, as used by Comer. Thus, it is respectfully

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submitted that the Examiner cannot broaden the term beyond the well known definition of the term – especially in light of the Specification. Therefore, it is respectfully submitted that Comer does not teach a step of encrypting a data packet to be transmitted.

Furthermore, Comer does not teach the step of "generating a sequence number associated with said encrypted data packet." First, as discussed previously, Comer does not teach encrypting data packets. Second, although Comer does teach generating a sequence number, there is nothing in Comer that indicates the generating a sequence number is associated with an encrypted data packet. The encryption discussion of Comer is in an entirely separate chapter and is 200 pages away from the cited discussion of TCP/IP. In fact, nothing in Comer remotely suggests the concept of an encrypted data packet, much less associating a sequence number with an encrypted data packet.

Thus, all the elements of claim 1 are not taught by Comer. Because all elements of claim 1 are not taught by Comer, a §102 rejection is not proper. Claims 9 and 10 have similar limitations as claim 1 and are patentable for similar reasons. The Examiner's consideration of claims 1, 9, and 10 is respectfully requested.

#### 4.) Claim Rejections – 35 U.S.C. § 103(a)

The Examiner rejected claims 2-8 and 11-18 under 35 U.S.C. § 103(a) as being unpatentable over Menezes, et al. ("Handbook of Applied Cryptography") in view of Comer. The Applicant respectfully traverses this rejection.

The Examiner states that "Menezes discloses decrypting packets based on their sequence." The Applicant does not dispute this assertion. However, this statement is not a limitation of the claims. For instance, the limitation of claim 2 is "decrypting said encrypted data packet based on a value of said sequence number – not based on their sequence. There is a difference between decrypting based on their sequence (i.e. arrival) and decrypting based on a sequence number. In fact, the use of the sequence numbers allows the data to arrive non-sequentially. The use of sequence numbers allows encryption/decryption of data regardless of the sequence (arrival) of the actual data packets.

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Clearly, Menezes does not teach the step of "decrypting said encrypted data packet based on a value of said sequence number." Menezes seems to understand the issue and does mention several techniques for reestablishing the sequence if it is lost. These techniques include "re-initialization, placing special markers at regular intervals in the ciphertext, or if the plaintext contains enough redundancy, trying all possible keystream offsets" (Menezes, page 193, note 6.3(i)). However, it is important to note that Menezes does not mention nor suggest the use of sequence numbers, nor the claimed step of "decrypting said encrypted data packet based on a value of said sequence number."

As provided in MPEP § 2143, "[t]o establish a prima facie case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." Furthermore, under MPEP § 2142, "[i]f the examiner does not produce a prima facie case, the Applicant is under no obligation to submit evidence of nonobviousness." It is submitted that the combination of Comer and Menezes does not teach the all the steps of the claimed combination. Consequently, the Office Action does not factually support a prima facie case of obviousness. The Applicant, therefore, respectfully requests that this rejection be withdrawn.

Claims 11 and 18 contain similar limitations to claim 2 and are thus patentable for similar reasons. Claims 3-6, and 11-15 depend from claims 2 and 11 respectively, and recite further limitations in combination with the novel elements of these claims. Therefore, the allowance of claims 3-6 and 11-15 is also respectfully requested.

With regard to claims 7, 8, 16, and 17, the Examiner took Official Notice that if jetting occurs, and sequence numbers might be confused, it is well known in the art and obvious to adjust the length of the number to compensate for such jetting.

As the Examiner is aware, in order preserve the Applicant's right to traverse this assertion in later actions, the Applicant must traverse this assertion in this Office Action. Therefore, in order to preserve the Applicant's future rights, the Applicant respectfully objects to the Examiner's use of official notice. Under MPEP § 2144.03, official notice may only be taken of "facts outside of the record which are capable of instant and unquestionable demonstration as being 'well-known' in the art." When a rejection is based on facts within the personal knowledge of the Examiner, the facts must be as

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specific as possible, and the reference must be supported, when called for by the Applicant, by an affidavit of the Examiner, which may be subject to explanation by the Applicant. 37 CFR 1.104(d)(2).

Pursuant to 37 CFR 1.104(d)(2), the Applicant respectfully requests the Examiner provide such supporting facts and evidence in the form of an affidavit, so that, if necessary, the Applicant may have a chance to explain the reference in later actions or appeal. In any event, as explained above with respect to the 102 rejection, Comer does not teach all of the elements of the independent claims. Furthermore, Menezes does not add the missing elements. So, according to the MPEP 2143, an obvious rejection is not proper and should be withdrawn

#### **5.) Double Patenting**

The Examiner has advised the Applicant that if claim 15 is found allowable, claim 18 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. The Applicant appreciates the Examiner's thorough review of the claims and has noted this issue. If claim 15 is found to be allowable, the Applicant will delete or amend the claims so as to avoid a double patenting objection. At this time, the Applicant respectfully requests that this objection be held in abeyance.

### **CONCLUSION**

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

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The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



Bill R. Naifeh  
Registration No. 44,962

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Ericsson Inc.  
6300 Legacy Drive, M/S EVR 1-C-11  
Plano, Texas 75024

(972) 583-2012  
bill.xb.naifeh@ericsson.com